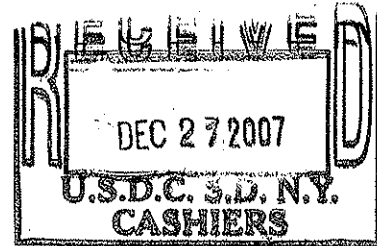


Lansing R. Palmer (LP-4179)
Akerman Senterfitt LLP
335 Madison Avenue, 26th Floor
New York, New York 10017-4636
(212) 880-3800

*Attorneys for Defendant and
Third-Party Plaintiff Boston Proper, Inc.*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**



NICOLE MILLER, LTD. d/b/a KOBRA
INTERNATIONAL, LTD., a New York
Corporation,

Plaintiff,

- against -

BOSTON PROPER, INC., a Florida
Corporation; and JOHN DOES 1-15; XYZ
CORPORATIONS 1-15,

Defendants.

ECF CASE
07 Civ. 9894 (VM)

THIRD-PARTY COMPLAINT

JURY TRIAL DEMANDED

BOSTON PROPER, INC., a Florida
Corporation

Third-Party Plaintiff,

- against -

RICHIE TAILOR, INC.,
a New York corporation

Third-Party Defendant

Defendant and Third-Party Plaintiff, Boston Proper, Inc., hereby files its third-party complaint ("Third-Party Complaint"), pursuant to Rule 14 of the Federal Rules of Civil

Procedure, based upon personal knowledge as to its own activities and upon information and belief as to the activities of others:

PARTIES

1. Upon information and belief, Plaintiff Nicole Miller, Ltd. d/b/a Kobra International, Ltd. is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 525 Seventh Avenue, New York, New York 10018. Nicole Miller, Ltd. and Kobra International, Ltd. are collectively referred to herein as "Plaintiff," or "Miller."

2. Defendant and Third-Party Plaintiff Boston Proper Inc. ("Boston Proper" or "Third-Party Plaintiff") is a corporation organized and existing under the laws of the State of Florida, having its principal place of business at 6500 Park Of Commerce Boulevard, Boca Raton, Florida 33487. Boston Proper is a multi-channel retailer of woman's apparel.

3. Upon information and belief, Third-Party Defendant Richie Tailor, Inc. ("Richie Tailor" or "Third-Party Defendant") is a corporation organized and existing under the laws of the State of New York having its principal place of business at 450 Seventh Avenue, Suite 306, New York, New York 10123.

JURISDICTION AND VENUE

4. Plaintiff's complaint, dated November 8, 2007 (the "Complaint") recites an action for: (a) copyright infringement; (b) unfair competition and false designation of origin; (c) deceptive acts and practices; and (d) unfair competition under state law, all of which activities have occurred in this District and elsewhere in interstate commerce. A copy of the Complaint (with Exhibits) is attached as Exhibit A hereto.

5. Boston Proper filed its Answer on December 17, 2007, and a copy of the Answer is attached hereto as Exhibit B.

6. In its Third-Party Complaint against Richie Tailor, Third-Party Plaintiff Boston Proper seeks to be indemnified and to be held harmless by Richie Tailor for any and all liability, loss or expense, including costs and counsel fees, incurred by Boston Proper as a result of Plaintiff's claims. The basis for Boston Proper's claims is found in the terms of Boston Proper purchase orders accepted by Third-Party Defendant.

7. Subject matter jurisdiction for the Plaintiff's claim of copyright infringement and unfair competition and false designation of origin is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), 17 U.S.C. § 501 and 15 U.S.C. § 1125(a). Supplemental jurisdiction for Plaintiff's claims of deceptive acts and practices and unfair competition under state law is proper in this Court pursuant to 28 U.S.C. § 1367.

8. Supplemental jurisdiction for this Third-Party Complaint is proper pursuant to 28 U.S.C. § 1367(a) because Boston Proper's claims against Third-Party Defendant herein are a part of the same case or controversy brought by Plaintiff's claims against Boston Proper.

9. This Court has personal jurisdiction over the Third-Party Defendant in that Richie Tailor resides, transacts business, and contracts to supply goods in the State of New York, within this judicial district.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(a) in that the Third-Party Defendant is subject to personal jurisdiction in this district.

FACTUAL BACKGROUND

A. BOSTON PROPER AND THIRD-PARTY DEFENDANT'S CONTRACTS

11. Boston Proper placed a series of purchase orders, including at least purchase order nos. 834245, 834246 and 834267, for goods with Third-Party Defendant.

12. Third-Party Defendant invoiced Boston Proper, specifically invoice nos. 3812, 3831, 3832, and 3833, for the goods that were subject to the purchase orders described in paragraph 11, in early 2007.

13. Boston Proper's purchase orders, including those described or identified in paragraph 11, state on their face that each "purchase order is subject to the terms and conditions on the reverse side, in addition to routing guide."

14. Each of the Boston Proper purchase orders, including those described or identified in paragraph 11, recite on their reverse sides:

10. INDEMNITY AGAINST PATENT, COPYRIGHT AND TRADEMARK ACTIONS – Company reserves the right to return at Vendor's expense any merchandise and cancel this order where a claim is made that the sale by Company of the merchandise subject to this order infringes any alleged patents, designs, trade names, trademarks, copyrights, or any other personal contractual or proprietary right of any third party. Vendor agrees to indemnify and hold harmless Company against any and all liability, loss or expense including costs and counsel fees, by reason of any patent, design, trade name, trademark, copyright or unfair competition claim (whether or not an action is filed) or any such litigation or other legal proceeding now existing or hereafter commenced with respect to any or all items covered by this order.

15. Plaintiff filed its Complaint against Boston Proper on November 8, 2007 for (a) copyright infringement; (b) unfair competition and false designation of origin; (c) unlawful and deceptive acts and practices; and (d) unfair competition under state law.

FIRST CAUSE OF ACTION
(Indemnification)

16. Boston Proper repeats and realleges the allegations contained in paragraphs 1 through 15 as if set forth in full herein.

17. By accepting Boston Proper's purchase orders, Third-Party Defendant agreed to indemnify and hold harmless Boston Proper against any and all liability, loss or expense, including costs and counsel fees, by reason of claims such as those brought by Plaintiff.

18. As a result of Plaintiff's Complaint, Boston Proper has been, and will continue to be, incurring losses, costs, expenses, and counsel fees, and is subject to liability and other damages in an amount to be proved at trial.

19. By reason of the foregoing, in the event that any judgment is awarded in favor of Plaintiff against Boston Proper, then Third-Party Defendant Richie Tailor will be liable for indemnification in the full amount of said judgment, and such indemnification should include reimbursement for costs and reasonable counsel fees.

SECOND CAUSE OF ACTION
(Expenses and Costs of Returning Goods)

20. Boston Proper repeats and realleges the allegations contained in paragraphs 1 through 19 as if set forth in full herein.

21. By accepting Boston Proper's purchase orders, Third-Party Defendant agreed that Boston Proper may cancel its purchase orders and return all goods received pursuant to those purchase orders at Third-Party Defendant's expense where a "claim is made for any patent, design, trade name, trademark, copyright or unfair competition claim (whether or not an action is filed)."

22. As a result of Plaintiff's Complaint, Boston Proper may cancel the purchase orders described and identified above and accepted by Third-Party Defendant pursuant to the express terms recited therein.

23. Also as a result of Plaintiff's Complaint, Boston Proper may return any of the goods received at Third-Party Defendant's expense under the express terms of the purchase orders described and identified above and accepted by Third-Party Defendant.

24. By reason of the foregoing, Boston Proper demands a credit for goods returned by reason of Plaintiff's Complaint and orders cancelled from Third-Party Defendant, in an amount to be determined at trial.

25. By reason of the foregoing, Boston Proper has suffered damages for lost profits, in an amount to be determined at trial, because once plaintiff asserted claims against Boston Proper, Boston Proper was prevented from reselling the goods to its financial detriment.

THIRD CAUSE OF ACTION
(Accounting)

26. Boston Proper repeats and realleges the allegations contained in paragraphs 1 through 25 as if set forth in full herein.

27. By accepting Boston Proper's purchase orders, Third-Party Defendant agreed that Boston Proper may cancel its purchase orders and return all goods received pursuant to those purchase orders at Third-Party Defendant's expense where a "claim is made for any patent, design, trade name, trademark, copyright or unfair competition claim (whether or not an action is filed)."

28. As a result of Plaintiff's Complaint, Boston Proper may cancel the purchase orders described and identified above and accepted by Third-Party Defendant pursuant to the express terms recited therein.

29. Also, as a result of Plaintiff's Complaint, Boston Proper may return any of the goods received at Third-Party Defendant's expense under the express terms of the purchase orders described and identified above and accepted by Third-Party Defendant.

30. Boston Proper is unable to determine the amount of money owed by Third-Party Defendant for goods returned by reason of Plaintiff's Complaint and orders cancelled unless Third-Party Defendant furnishes Boston Proper with a complete and accurate accounting.

31. Third-Party Defendant, in an effort to thwart Boston Proper from collecting sums justly due to Boston Proper from Third-Party Defendant for goods returned by reason of Plaintiff's Complaint and orders cancelled, refuses to furnish a true, accurate and complete accounting.

32. Upon information and belief, this accounting will show all monies now due and owing to Boston Proper from Third-Party Defendant, and will also disclose the existence of additional monies that may become due and owing to Boston Proper in the future.

33. Once an accounting has been rendered or an audit conducted of Third-Party Defendant's book and records, the Court shall order disgorgement of monies received and accepted by Third-Party Defendant which properly belongs to Boston Proper.

34. Boston Proper has no adequate remedy at law.

WHEREFORE, Defendant and Third-Party Plaintiff Boston Proper demands that judgment be entered in favor of Boston Proper and against Third-Party Defendant Richie Tailor:

(a) On the first cause of action, for indemnification awarding damages to Boston Proper in the full amount of any judgment awarded to Plaintiff against Boston Proper, including reimbursement for any costs and reasonable counsel fees incurred by Boston Proper in defending the action-in-chief and in commencing and prosecuting this third-party action;

(b) On the second cause of action, an award of a credit for goods returned by reason of Plaintiff's Complaint and orders cancelled from Third-Party Defendant and actual damages sustained by Boston Proper for lost profits, in an amount to be determined at trial;

(c) On the third cause of action, that Third-Party Defendant be ordered to account to Boston Proper with respect to all monies owed by Third-Party Defendant for goods returned by reason of Plaintiff's Complaint and orders cancelled;

(d) For an award of costs and reasonable attorneys' fees;

(e) For Boston Proper's expenses and costs of returning goods that are the subject of the purchase orders to Third-Party Defendant; and

(f) For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Boston Proper hereby demands a jury trial on all triable issues raised by this Complaint.

Dated: New York, New York
December 27, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lansing R. Palmer', is written over a horizontal line.

Lansing R. Palmer (LP-4179)
Akerman Senterfitt LLP
335 Madison Avenue, 26th Floor
New York, New York 10017-4636
(212) 880-3800

*Attorneys for Defendant and
Third-Party Plaintiff Boston Proper, Inc.*

ORIGINAL

JUDGE HOLWELL

07 CIV 9894

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICOLE MILLER, LTD. d/b/a KOBRA
INTERNATIONAL, LTD., a New York
Corporation,

Plaintiff,

- against -

BOSTON PROPER, INC., a Florida
Corporation; and JOHN DOES 1-15; XYZ
CORPORATIONS 1-15,

Defendants.

Civil Action No.:

COMPLAINT FOR COPYRIGHT
INFRINGEMENT, UNFAIR
COMPETITION AND FALSE
DESIGNATION OF ORIGIN AND
UNLAWFUL AND DECEPTIVE ACTS
AND PRACTICES
(JURY TRIAL DEMANDED)

FILED
U.S. DISTRICT COURT
2007 NOV -8 PM 1:50
S.D. OF N.Y.

Plaintiffs Nicole Miller, Ltd. d/b/a Kobra International, Ltd. hereby file this Complaint on personal knowledge as to their own activities and on information and belief as to the activities of others:

THE PARTIES

1. Plaintiff Nicole Miller, Ltd. d/b/a Kobra International, Ltd. is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 525 Seventh Avenue, New York, New York 10018. Nicole Miller, Ltd. and Kobra International, Ltd. are collectively referred to as "Nicole Miller" or "Plaintiff."

2. Upon information and belief, Defendant Boston Proper Inc. ("Boston Proper" or "Defendant") is a corporation organized and existing under the laws of the State of Florida and

having its principal place of business at 6500 Park Of Commerce Boulevard, Boca Raton, Florida 33487. Boston Proper is a multi-channel retailer of woman's apparel that transacts business and contracts to supply goods within the State of New York and throughout the United States through its website at <www.bostonproper.com> and through its catalogs.

3. Defendants John Does 1-15 and XYZ Corporations 1-15, whose identities and addresses are presently unknown to Nicole Miller, are individuals and corporate entities that, upon information and belief, have made, imported, offered to sell and/or sold to the Defendant the infringing items complained of herein. The Complaint herein will be amended, if appropriate, to include the name or names of these individuals when such information becomes available. Boston Proper, and John Does 1-15 and XYZ Corporations 1-15 may be referred to separately or collectively as "Defendants."

JURISDICTION AND VENUE

4. This is an action for: (a) copyright infringement in violation of the Copyright Law, 17 U.S.C. §§501, *et. seq.*; (b) unfair competition and false designation of origin in violation of 15 U.S.C. §1125(a); (c) unlawful and deceptive acts and practices in violation of N.Y. Gen. Bus. Law §349; and (d) unfair competition under New York state law, all of which activities have occurred in this District and elsewhere in interstate commerce.

5. Subject matter jurisdiction for the claim of copyright infringement and unfair competition and false designation of origin is proper in this Court pursuant to 28 U.S.C. §§1331, 1332, 1338(a), 17 U.S.C. §501 and 15 U.S.C. §1125(a). Supplemental jurisdiction for the claims of unlawful deceptive acts and practices and unfair competition is proper in this Court pursuant to 28 U.S.C. §1367 because these claims form part of the same case or controversy as the claim for copyright infringement.

6. This Court has personal jurisdiction over the Defendant in that Defendant transacts business and contracts to supply goods in the State of New York including this District.

7. Venue is proper in this District pursuant to 28 U.S.C. §§1391 and 1400(a) in that the Defendant is subject to personal jurisdiction in this Judicial District.

FACTUAL BACKGROUND

A. NICOLE MILLER PRODUCTS AND SALE OF ITS COPYRIGHTED DESIGN

8. Nicole Miller is one of the leading designers of clothing and fashion accessories in the World. Nicole Miller's designs have been prominently featured in numerous magazines, television shows, and other forms of media. Nicole Miller's designs are also frequently worn by celebrities at prestigious events. Accordingly, Nicole Miller has become a preeminent symbol of luxury apparel and fashion goods of the highest quality ("Nicole Miller Products").

9. Nicole Miller is the exclusive owner of the copyright in a fabric design known as "Africa Design," which is the subject of U.S. Copyright Registration No. VA-1-378-665 registered on November 2, 2006 (the "Africa Design" or the "Nicole Miller Copyright"). A true and accurate copy of the Certificate of Registration and related deposit for the Africa Design is attached hereto as Exhibit A. In March 2006, Nicole Miller introduced the Africa Design on dress style # BM0155, and has sold more than 1,000 dresses with the Africa Design.

10. The registration of the Africa Design creates a legal presumption in favor of Nicole Miller with respect to the ownership of and the validity of the copyrights in these works.

11. Nicole Miller Products bearing the Nicole Miller Copyright are sold in high-end department stores, such as Bloomingdale's, Neiman Marcus and Nordstrom, as well as in Nicole Miller boutiques throughout this District and elsewhere in the United States. A copy of the Nicole Miller store locator for New York is attached hereto as Exhibit B. Nicole Miller has spent millions of dollars and has expended significant effort in advertising, promoting and

developing the Nicole Miller Products throughout the world. Nicole Miller has advertised the Africa Design in the April 2006 issues of *Elle* and *In Style* magazines. Copies of these advertisements are attached hereto as Exhibit C. As a result of such advertising and expenditures, Nicole Miller has established considerable goodwill in the Nicole Miller Products, namely the Africa Design.

B. BOSTON PROPER DEFENDANT'S UNLAWFUL ACTS

12. On or about March 2007, Nicole Miller learned that Boston Proper was selling apparel, including a dress and a top, bearing a design virtually identical to the Africa Design (the "Infringing Products") through its website <bostonproper.com> as well as through its mail order catalog. True and accurate copies of photographs of the Infringing Products are attached hereto as Exhibit D.

13. On March 22, 2007, Nicole Miller, through its attorneys, Greenberg Traurig LLP, sent a cease and desist letter to Boston Proper. A true and accurate copy of the cease and desist letter is attached hereto as Exhibit E.

14. Upon information and belief, Boston Proper has distributed and/or sold the Infringing Products throughout the United States, including in New York and this District.

15. Upon information and belief, Boston Proper has willfully and/or negligently infringed the Nicole Miller Copyright by distributing, selling and/or offering for sale infringing products bearing the Africa Design without Nicole Miller's authorization. Nicole Miller has neither licensed nor authorized Boston Proper to reproduce, adapt and/or display Nicole Miller's copyrighted Africa Design or to manufacture, distribute, advertise, sell or offer to sell apparel that are infringing copies of the Nicole Miller Products.

16. Upon information and belief, the conduct of Boston Proper was and is willfully done with knowledge of, and/or reckless disregard for, Nicole Miller's rights in its copyrighted Africa Design for the purpose of damaging Nicole Miller's business and profiting from the unauthorized distribution, and sale of products bearing the Nicole Miller Copyright.

FIRST CLAIM FOR RELIEF
(Copyright Infringement Under 17 U.S.C. §501)

17. Nicole Miller realleges and incorporates by reference the allegations above.

18. Nicole Miller is the owner of the Nicole Miller Copyright.

19. Nicole Miller has never authorized Defendant to make copies of the Nicole Miller Copyright, or to distribute or display the Africa Design. Defendant's acts of copying, distributing and displaying the Nicole Miller Copyright, which have been willful and deliberate, have been performed without license, authorization or consent from Nicole Miller.

20. As a direct and proximate result of Defendant's acts, Nicole Miller has suffered damages to its valuable Nicole Miller Copyright, and other damages in an amount to be proved at trial.

21. Nicole Miller does not have an adequate remedy at law, and will continue to be damaged by Defendant's copyright infringement unless this Court enjoins Defendant from such fraudulent business practices.

22. Defendant has realized unjust profits, gains and advantages as a proximate result of its infringement.

SECOND CLAIM OF RELIEF
(Unfair Competition and False Designation of Origin Under 15 U.S.C. § 1125(a))

23. Nicole Miller realleges and incorporates by reference the allegations above.

24. The Infringing Products are nearly identical or substantially similar to the copyrighted Africa Design and, as such, Defendant's sale of the Infringing Products is likely to cause confusion to the general purchasing public.

25. By manufacturing and/ or arranging for manufacture of, advertising, distributing, offering for sale and selling the Infringing Products that bear a design identical or substantially similar to the copyrighted Africa Design, Defendant misrepresents and falsely describes to the general public the origin and source of the Infringing Products and create a likelihood of confusion by ultimate purchasers and to others seeing the Infringing Products as to both the source and sponsorship of such merchandise.

26. Defendant's unlawful, unauthorized and unlicensed manufacturing, advertising, distributing, offering for sale and/or selling of the Infringing Products creates express and implied misrepresentations that the Infringing Products were created, authorized or approved by Nicole Miller, all to Defendant's profit and Nicole Miller's great damage and injury.

27. Defendant has realized unjust profits, gains and advantages as a proximate result of their unfair competition.

28. Nicole Miller has no adequate remedy at law. If Defendant's activities are not enjoined, Nicole Miller will continue to suffer irreparable harm and injury to its goodwill and reputation.

THIRD CLAIM OF RELIEF

(Unlawful Deceptive Acts and Practices Under New York General Business Law § 349)

29. Nicole Miller realleges and incorporates by reference the allegations above.

30. On information and belief, Defendant, without Nicole Miller's authorization or consent, and having knowledge of Nicole Miller's well-known and prior rights in the Nicole Miller Copyright has manufactured and/ or arranged for manufacture of, advertised, distributed,

offered for sale and sold Infringing Products to the consuming public in direct competition with Nicole Miller Products.

31. Defendant's use of copies or simulations of the Nicole Miller Copyright is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of the Infringing Products, and is likely to deceive the public into believing the Infringing Products being sold by Defendant originate from, are associated with, or are otherwise authorized by Nicole Miller.

32. Defendant's deceptive acts and practices involve public sales activities of a recurring nature.

33. Defendant has realized unjust profits, gains and advantages as a proximate result of their unlawful deceptive acts and practices.

34. Nicole Miller has no adequate remedy at law and, if Defendant's activities are not enjoined, Nicole Miller will continue to suffer irreparable harm and injury to its goodwill and reputation.

FOURTH CLAIM OF RELIEF

(Unfair Competition Under New York State Law)

35. Nicole Miller realleges and incorporates by reference the allegations above.

36. Nicole Miller has built up valuable goodwill in the Nicole Miller Copyright.

37. Defendant's use of the Nicole Miller Copyright is likely to and does permit Defendant to palm off the Infringing Products as those of Nicole Miller, all to the detriment of Nicole Miller and the unjust enrichment of Defendant.

38. Defendant, upon information and belief, with full knowledge of the fame of Nicole Miller and the Nicole Miller Copyright, intended to and did trade on the goodwill associated with the Nicole Miller Copyright and has misled and will continue to mislead the

public into assuming a connection between Nicole Miller and Defendant by manufacturing, arranging for manufacture, advertising, selling and/or distributing the Infringing Products.

39. The acts of Defendant mislead and deceive the public as to the source of Defendant's goods, permit and accomplish the palming off of Defendant's goods as those of Nicole Miller and falsely suggest a connection with Nicole Miller, and therefore constitute acts of unfair competition with Nicole Miller in violation of the laws of the State of New York.

58. Defendant has realized unjust profits, gains and advantages as a proximate result of their unfair competition.

59. Defendant's acts have and will continue to cause Nicole Miller irreparable harm unless enjoined by this Court. Nicole Miller has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Nicole Miller prays for the following relief against Defendant:

1. That Defendant, its officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it be permanently enjoined from directly or indirectly infringing the Nicole Miller Copyright in any manner, including, but not limited to, reproducing, adapting, and/or displaying the Nicole Miller Copyright by manufacturing, distributing, importing, exporting, advertising, selling, and/or offering for sale, or causing others to do so, any product, including without limitation clothing, bearing designs substantially similar to the Nicole Miller Copyright;

2. That Defendant be required to effectuate the recall, removal, and return from commercial distribution and/or public display of:

(a) Any product bearing a design substantially similar to the Nicole Miller Copyright manufactured, distributed, imported, exported, advertised, sold, and/or offered

for sale by Defendant, its officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it; and

(b) Any promotional and/or advertising materials, labels, packaging, or other items bearing a design substantially similar to the Nicole Miller Copyright used or displayed by Defendant, its officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it; and

(c) Any mold, pattern, or other item used by Defendant, its officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it, to manufacture any product, promotional and/or advertising materials, labels, packaging, or other item bearing a design substantially similar to the Nicole Miller Copyright;

3. That Defendant be required to deliver up for destruction all of the items called for by Paragraph 2 of this Prayer for Relief, above, as well as any remaining products, advertising, packaging, molds, patterns, or other items bearing a design substantially similar to the Nicole Miller Copyright, or used to manufacture any item bearing a design substantially similar to the Nicole Miller Copyright, that are in Defendant's custody or control;

4. That Defendant, within thirty (30) days after service of judgment with notice of entry thereof upon it, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth the details of how Defendant has complied with Paragraphs 1 through 3 of this Prayer for Relief, above;

5. For an award of actual damages sustained by Plaintiff;

6. For an award of Defendant's profits attributable to its copyright infringement;
7. If elected by Plaintiff, for the maximum statutory damages as permitted under the Copyright Act;

8. For such other amounts as may be proper under 17 U.S.C. § 504;
9. For an award of costs and attorneys' fees pursuant to 17 U.S.C. § 505;
10. For prejudgment interest as permitted by law;
11. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all triable issues raised by this Complaint.

Dated: November 8, 2007
New York, New York

Respectfully submitted,

GREENBERG TRAURIG, LLP

By:


G. Roxanne Elings (GE 8321)

Deidre D. Blocker (DB 0762)

200 Park Avenue, MetLife Building

New York, NY 10166

(212) 801-9200

Attorney for Plaintiffs

Nicole Miller, Ltd. d/b/a Kobra International, Ltd.

FILE COPY
JUDGE HOLWELL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 CIV 9894

NICOLE MILLER, LTD. d/b/a KOBRA
INTERNATIONAL, LTD., a New York
Corporation,

Plaintiff,

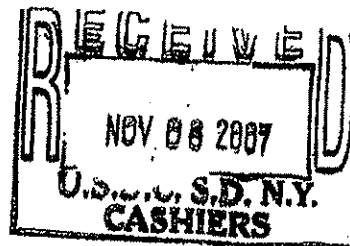
- against -

BOSTON PROPER, INC., a Florida
Corporation; and JOHN DOES 1-15;
XYZ CORPORATIONS 1-15,

Defendants.

: CIV. ACTION NO.:

: PLAINTIFFS' RULE 7.1
: CERTIFICATION



Pursuant to Fed. R. Civ. P. 7.1, and to enable Judges and Magistrate Judges to evaluate possible disqualification or recusal, the undersigned counsel for Plaintiffs, a private non-governmental party certifies that there are no corporate parents, affiliates and/or subsidiaries of said party, which are publicly held.

Dated: November 8, 2007

Respectfully submitted,

GREENBERG TRAURIG, LLP

By:

G. Roxanne Elings (GE 8321)
Deidre D. Blocker (DB 0762)
200 Park Avenue, MetLife Building
New York, NY 10166
(212) 801-9200

Attorney for Plaintiffs Nicole Miller, Ltd.
d/b/a Kobra International, Ltd.

AFFIDAVIT OF SERVICE

**UNITED STATES DISTRICT COURT
Southern District of New York**

Index Number: 07-CIV-9894

Date Filed: 11/8/2007

Plaintiff:

NICOLE MILLER, LTD D/B/A KOBRA INTERNATIONAL LTD.,

vs.

Defendant:

BOSTON PROPER INC.,

For:

Roxanne Elings

Greenberg Traurig, LLP

Received by Rock Legal Services & Investigations Inc on the 9th day of November, 2007 at 1:29 pm to be served on **Boston Proper Inc., 6500 Park Of Commerce Blvd., Boca Raton, FL 33487.**

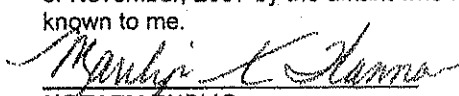
I, Pennie Cain, being duly sworn, depose and say that on the **9th day of November, 2007 at 2:25 pm, I:**


CORPORATE: served by delivering a true copy of the **Summons, Complaint, & Plaintiffs' Rule Certification** with the date and hour of service endorsed thereon by me, to: **Ed Murtagh as Vice President for Boston Proper Inc.,** at the address of: **6500 Park Of Commerce Blvd., Boca Raton, FL 33487,** and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 55, Sex: M, Race/Skin Color: White, Height: 5'9, Weight: 170, Hair: Black/Grey, Glasses: N

I hereby certify I have read the foregoing and the facts stated are true and correct, I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the county in which service was effected in accordance with State Statutes.

Subscribed and Sworn to before me on the 17th day of November, 2007 by the affiant who is personally known to me.


NOTARY PUBLIC

NOTARY PUBLIC-STATE OF FLORIDA
 Marilyn T. Hannan
Commission # DD495297
Expires: NOV 30, 2009
Bonded Thru Atlantic Bonding Co., Inc.


Pennie Cain
Process Server #931

Rock Legal Services & Investigations Inc
809 North Dixie Highway
Suite 101
West Palm Beach, FL 33401
(561) 296-7574
Our Job Serial Number: 2007022699
Ref: 066524.011500

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Margareth Peters

Register of Copyrights, United States of America

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

REG. NO. **VA 1-378-565**



EFFECTIVE DATE OF REGISTRATION

Nov 2 2006
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 Title of This Work **▼** **Africa** NATURE OF THIS WORK **▼** See Instructions **Design on Fabric**

Previous or Alternative Titles **▼**

Publication as a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work **▼**

If published in a periodical or serial give: Volume **▼** Number **▼** Issue Date **▼** On Page **▼**

2 **NOTE** Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

a NAME OF AUTHOR **▼** **Kobra International, Ltd.** DATES OF BIRTH AND DEATH
Year Born **▼** Year Died **▼**

Was this contribution to the work a "work made for hire"? **Yes** ☒ No ☐

Author's Nationality or Domicile
Name of Country **OR** Citizen of **U.S.A.**
Domiciled in **U.S.A.**

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No ☐ If the answer to either of these questions is "Yes," see detailed instructions.
Pseudonymous? ☐ Yes ☒ No ☐

Nature of Authorship Check appropriate box(es). See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

b Name of Author **▼** Dates of Birth and Death
Year Born **▼** Year Died **▼**

Was this contribution to the work a "work made for hire"? **Yes** ☒ No ☐

Author's Nationality or Domicile
Name of Country **OR** Citizen of **U.S.A.**
Domiciled in **U.S.A.**

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No ☐ If the answer to either of these questions is "Yes," see detailed instructions.
Pseudonymous? ☐ Yes ☒ No ☐

Nature of Authorship Check appropriate box(es). See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3 Year in Which Creation of This Work Was Completed **2005** Date and Nation of First Publication of This Particular Work
Month **07** Day **27** Year **2005**
This information must be given if the work has been published. **U.S.A.** Nation

4 **See instructions before completing this space.** COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. **▼**
Kobra International, Ltd.
525 Seventh Avenue
New York, NY 10018

Transfer: If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. **▼**

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Nov 2 2006
ONE DEPOSIT RECEIVED
Nov 2 2006
TWO DEPOSITS RECEIVED
Nov 2 2006
FUNDS RECEIVED

MORE ON BACK **▶** Complete all applicable spaces (numbers 5-8) on the reverse side of this page.
See detailed instructions. Sign the form at the bottom.

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Page 1 of 2 pages

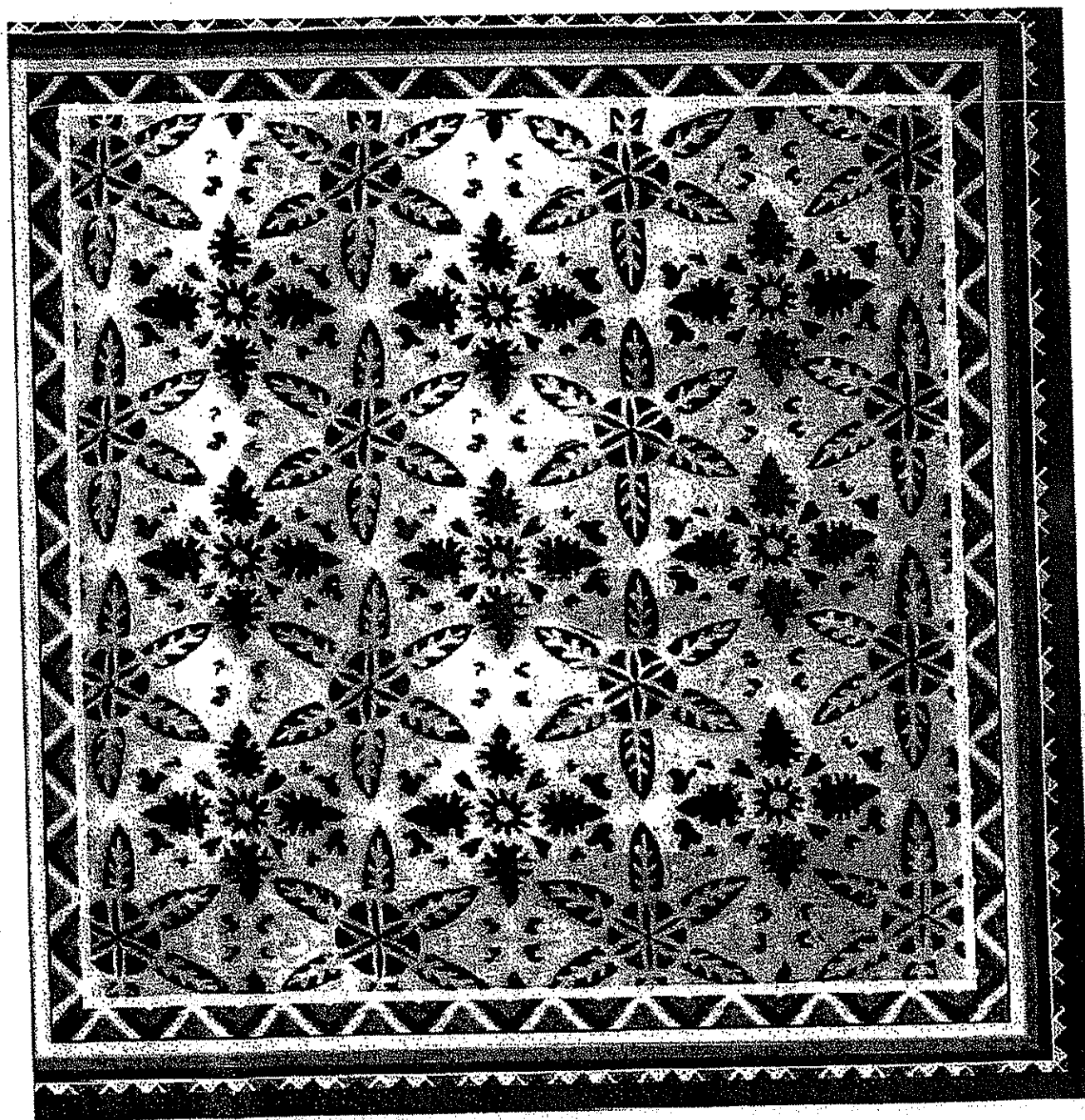
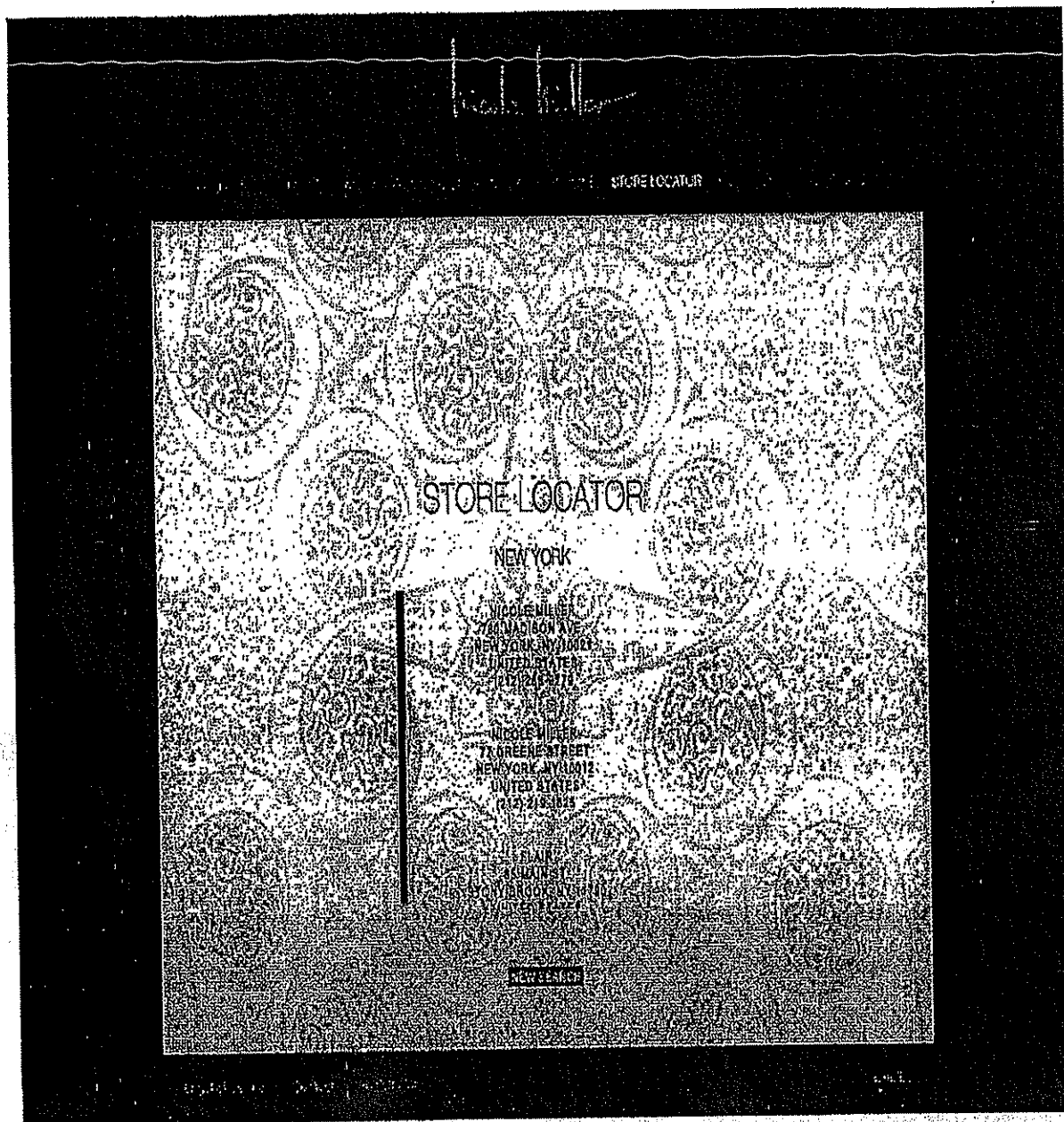


EXHIBIT B

NICOLE MILLER

Page 1 of 1



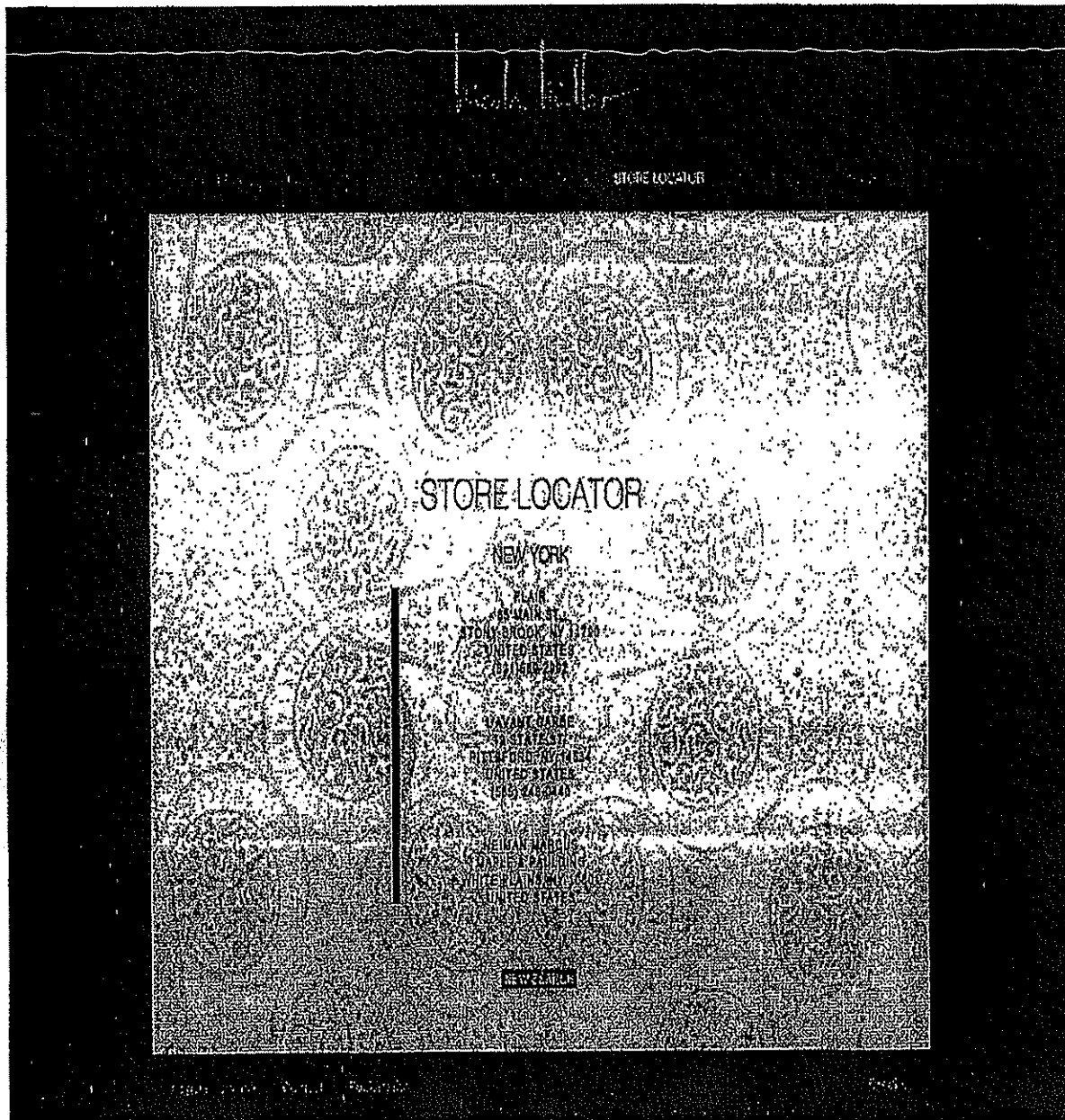


EXHIBIT C

**fashion's Hottest
DEALS & STEALS**

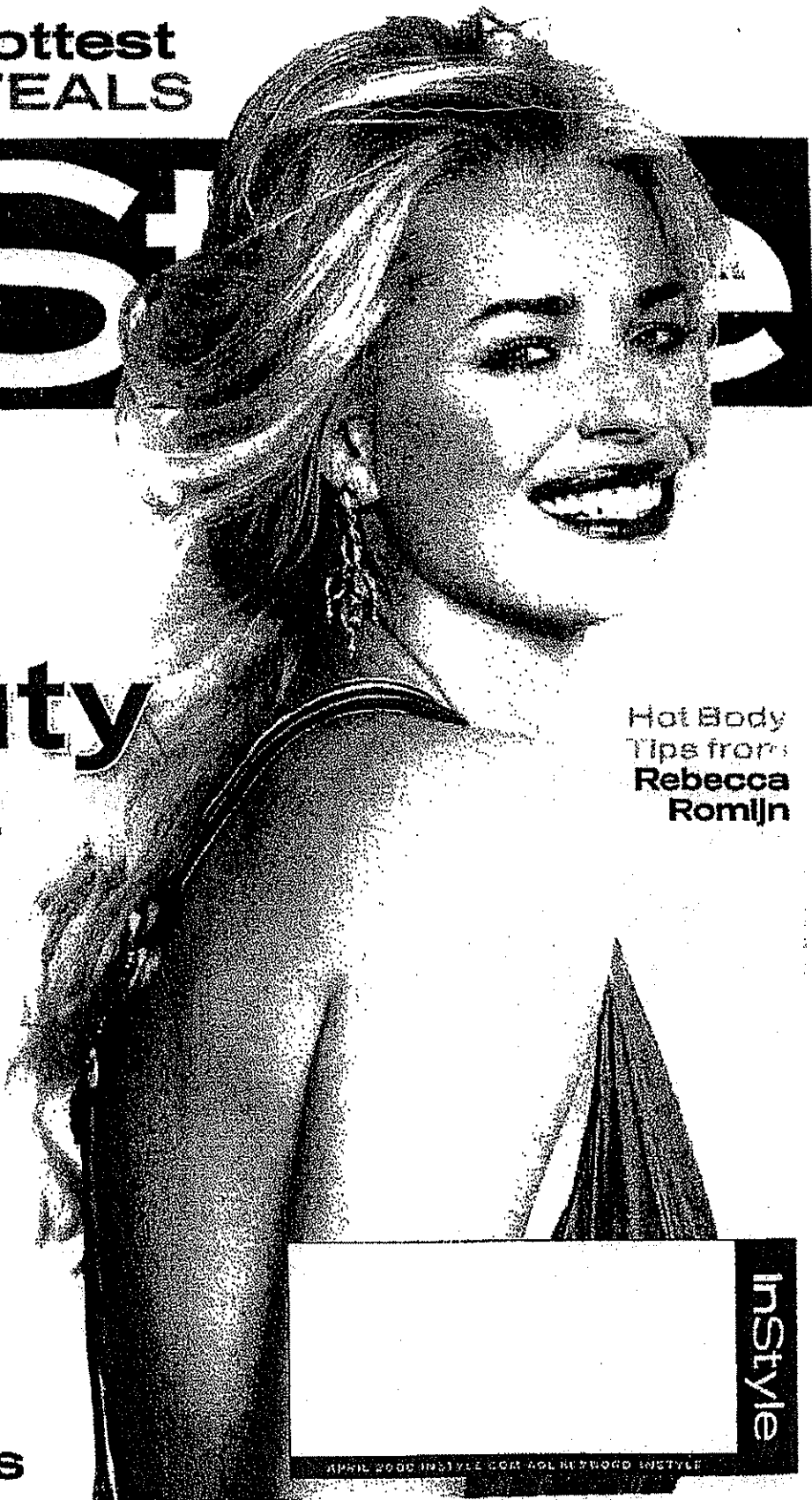
nStyle

**63
Best
Beauty
Buys**

Hot Body
Tips from
**Rebecca
Romijn**

**SPRING
CLOTHES
What to
Wear Now!**

**PLUS:
Easy,
Pretty Hair
Flattering
Work Outfits**



nStyle

APRIL 2000 INSTYLE.COM AOL KEYWORD INSTYLE

STRESS TEST: ARE YOU DOING TOO MUCH?

READY, SET, SHOP!

200+
OF SPRING'S
BEST SHOES,
BAGS, BELTS,
& BANGLES

BEAUTY SPECIAL

100

BET-G
NPS F
MAKE
HAIRST

SHAKIRA FIXATION

WHY WE LOVE
THE BRAINY
BOMBSHELL

**SO LONG,
EYE LIFT!
TECHNIQUES
MAKING
THE KNIFE
OBSOLETE**

**THE SECRETS OF
SUCCESSFUL
WOMEN**
12 HIGH
ACHIEVERS AND
LATE BLOOMERS
TELL HOW
THEY DID IT

**JOSH
HARTNETT:**
THE SEXY STAR
IS (RE)BORN



ELLE.COM

APRIL 2006
USA \$5.50
CANADA \$2.50

#BXNBQPT ***ER-LOT 0018A*C004
 #TLT0525F092 8#580004 E2

MS NY 10018-4988
NEW YORK
MARY TILT
COLE MILLER OFFC
FASHION AV
NY 10018-4988
DEC 06
MRZ
#0723

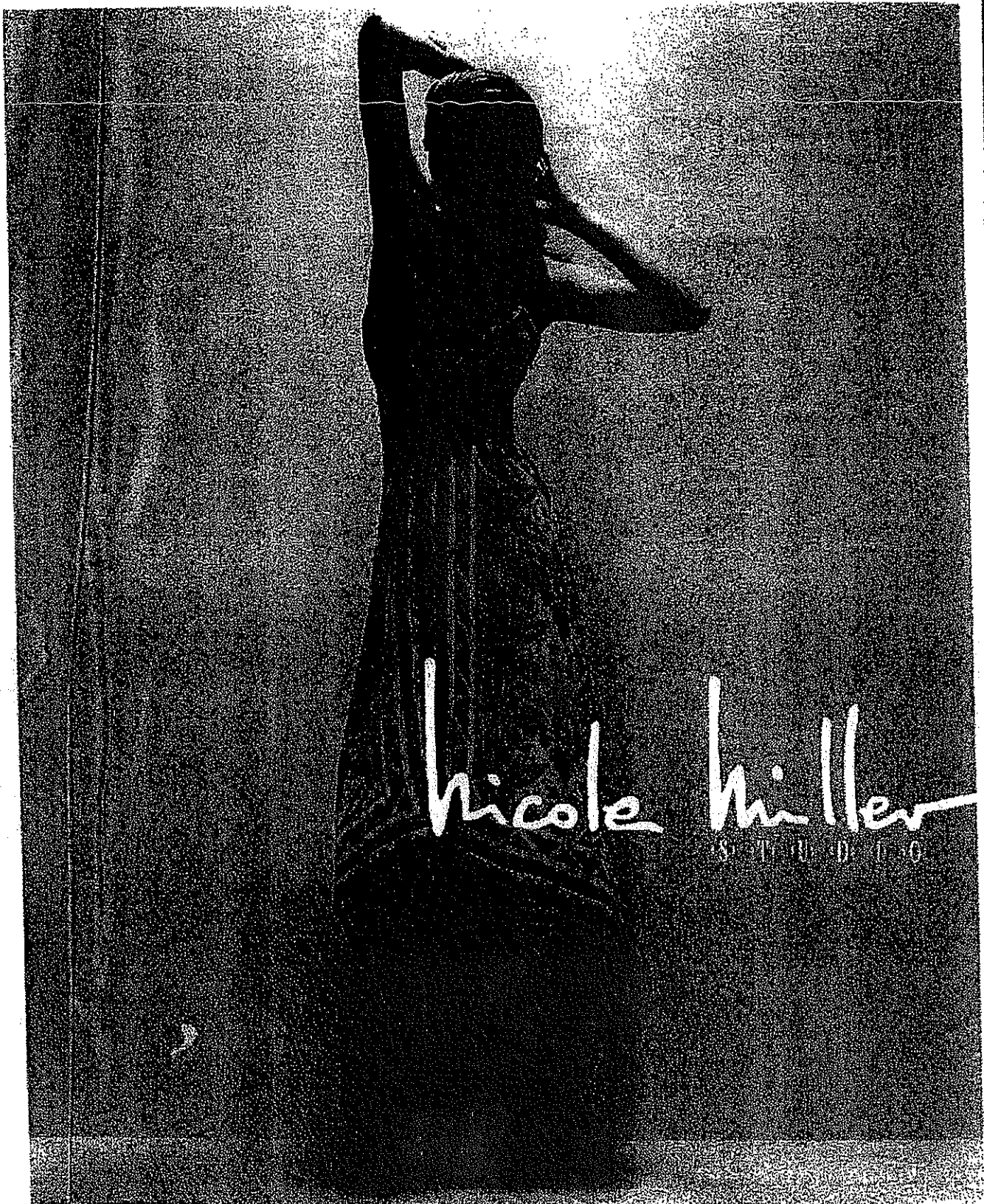


EXHIBIT D



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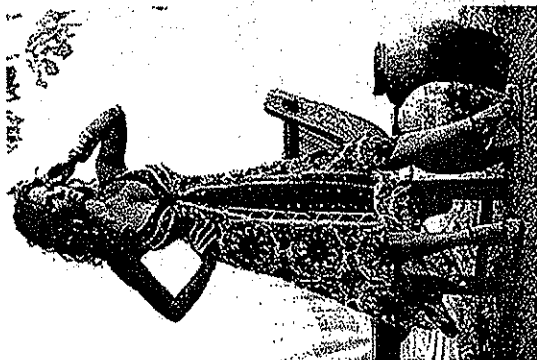
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search

[advanced search](#)

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Border-print primal dress, \$149.00

This dress has a plunging wide V-neckline with gathered knotted bodice; uneven hem. Back zip. Silk. Imported. Dry clean. 56" length at longest point. Sizes 2-14. Multi.
FIT NOTE: Sexy close-fitting bodice with an A-line skirt.
826049D7

[see size information](#)

[select size](#)

[select color](#)

[add to shopping bag](#)

[add to wish list](#)

[add to cart](#)

Qty

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[see colors](#)

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NuBra® Ultra-light, \$32.00



Mixed bangle bracelet set, \$49.00



X-front patent wedge sandals, \$89.00



Wood tinker earrings, \$39.00

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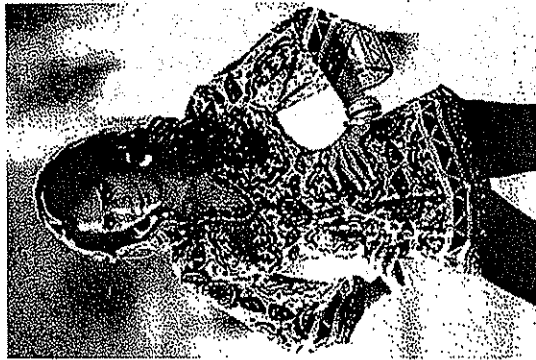
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[home > categories > shirts & blouses](#)

search keyword or product id [advanced search](#) [shopping bag](#)



African-print top. \$129.00

Top with elastic ruching at bust; heavily-beaded notch neckline. Three-quarter flare sleeves. Silk. Imported. Dry clean. Sizes XS(2-4), S(6-8), M(10-12), L(14-16). Multi.
FIT NOTE: Relaxed; easy fit with slight shaping. Follow the given size equivalents for the best fit. If in between sizes, take the next smaller size.
826028D7

[see size information](#)

[select size](#)

[select color](#)

[add to shopping bag](#)

[see larger view](#)

[see detail](#)

[see another view](#)

[see colors](#)



Basic leggings. \$39.00



Wood trinket earrings. \$39.00



X-front patent wedge sandals. \$89.00



Your favorite fitted boot-cut jeans. \$59.00

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EXHIBIT E

Greenberg Traurig

G. Roxanne Elings
212-801-2148
elingsr@gtlaw.com

March 22, 2007

**VIA OVERNIGHT MAIL
AND FACSIMILE (561) 241-1055**

Boston Proper
6500 Park of Commerce Boulevard
Boca Raton, Florida 33487

Re: Infringement of Nicole Miller Copyrights
Our reference: 66524.020000

Dear Sir or Madam:

We are intellectual property counsel for Kobra International, Ltd. d/b/a Nicole Miller ("Nicole Miller"), a world famous fashion house, which styles, manufactures and sells diverse articles of men's, women's and children's apparel, luggage, purses, and other accessories. In addition to owning exclusive rights in the trademark NICOLE MILLER and other marks, Nicole Miller owns all rights, title and interest in its original fabric designs, many of which are registered with the United States Copyright Office.

One such fabric design exclusively owned by Nicole Miller is known as the "Africa Design" ("Africa Design"). The Africa Design consists of a green and yellow background print, with a flower design composed of a flower within a circle, and then six petals emanating from the center circle. The design also has a floral pattern consisting of a circle with four petals stemming from the core. In addition, the border of the Africa Design is a distinctive multicolor geometric pattern. Nicole Miller first began selling the Africa Design in July 2005, and has registered the Africa Design with the Copyright Office. The copyright registration for the Africa Design is annexed hereto as Exhibit A.

Nicole Miller has expended substantial time, effort and money in developing and promoting its products, and has built a national – and worldwide – reputation and notoriety based on its high-quality original creations, including the Africa Design.

We have learned that Boston Proper is selling apparel, including a dress and top, that are virtually identical to Nicole Miller's Africa Design (the "Infringing Goods") through the website <bostonproper.com>. Pictures of the Infringing Goods are attached as Exhibit B for your reference. Please be advised the sale of apparel that are so similar to Nicole Miller's Africa Design violates Nicole Miller's rights under United States Copyright laws. Any intentional and willful infringement may entitle Nicole Miller to recover statutory damages of up to \$150,000 or, in the alternative, to recover your profits from sales of these garments, in addition to Nicole Miller's costs and attorney's fees.

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
BRUSSELS*
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MIAMI
MILAN*
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PHILADELPHIA
PHOENIX
ROME*
SACRAMENTO
SILICON VALLEY
TALLAHASSEE
TAMPA
TOKYO*
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
ZURICH

*Strategic Alliance
Tokyo-Office/Strategic Alliance

Boston Proper
March 22, 2007
Page 2

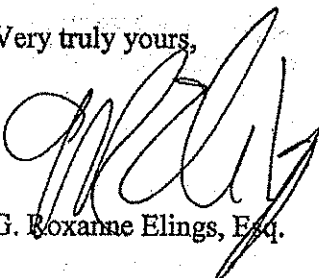
Please be advised that Nicole Miller has already initiated a lawsuit in the Southern District of New York against a manufacturer and two retailers for copyright infringement of its Africa Design. Accordingly, to fully resolve this matter, we demand that you immediately provide us with the following information:

1. Provide an accounting of any inventory of Infringing Goods;
2. Provide the total number of units of Infringing Goods distributed and/or sold to date and the total dollar amount received from such sales;
3. Provide a written statement that you have ceased any and all sale of the Infringing Goods, and will not otherwise infringe any of Nicole Miller's copyrighted designs in the future.

Because of the urgency of this matter, we request a response to our demands no later than close of business on March 30, 2007. Should you fail to comply with these demands within the time period, we are instructed to take all legal steps necessary to halt the sales of these infringing goods.

The above does not constitute an offer of settlement and is sent without prejudice to any rights or claims of Nicole Miller, all of which expressly are reserved.

Very truly yours,



G. Roxanne Elings, Esq.

cc: Nicole Miller

Enclosures

Exhibit A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

REGI VA 1-378-865



EFFECTIVE DATE OF REGISTRATION

Nov 2 2006
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work

NATURE OF THIS WORK See Instructions

Africa

Design on Fabric

Previous or Alternative Titles

Publication as a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial, give: Volume

Number

Issue Date

On Pages

2

NAME OF AUTHOR

a Kobra International, Ltd.

DATES OF BIRTH AND DEATH

Year Born Year Died

Was this contribution to the work a "work made for hire"?

☒ Yes
☐ No

Author's Nationality or Domicile
Name of Country

OR Citizen of U.S.A.
Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No If the answer to either of these questions is "Yes," see detailed instructions.
Pseudonym? ☐ Yes ☒ No

Nature of Authorship Check appropriate box(es). See Instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

Name of Author

Dates of Birth and Death

Year Born Year Died

Was this contribution to the work a "work made for hire"?

☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country

OR Citizen of
Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No If the answer to either of these questions is "Yes," see detailed instructions.
Pseudonym? ☐ Yes ☒ No

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☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☐ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

3

Year in Which Creation of This Work Was Completed

2005

This information should be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month 07 Day 27 Year 2005

U.S.A.

Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

Kobra International, Ltd.
525 Seventh Avenue
New York NY 10018

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK

• Complete all applicable spaces (numbers 3-9) on the reverse side of this page.
• See detailed instructions.
• Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 2 pages

EXAMINED BY: MCJ FORM VACHECKED BY: WDB☐ CORRESPONDENCE☐ YesFOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☐ No. If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ☐ Va. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.If your answer is "Yes," give Previous Registration Number 7.Year of Registration 7

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. 7b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. 7

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name 7Account Number 7CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/Zip 7Estelle Rose, Kobra International, Ltd.
525 Seventh Avenue, 20th Floor
New York, NY 10018

Area code and daytime telephone number (212) 719-9200

Fax number (212) 869-1938

E-mail 7

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one: ☐☐ author.☐ other copyright claimant.☐ owner of exclusive right(s).☒ authorized agent of Kobra International, Ltd.

(Name of author or other copyright claimant, or owner of exclusive right(s).)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date 7 If this application gives a date of publication in space 3, do not sign and submit it before that date.

G. Roxanne Blings

Date 10/30/2006

Handwritten signature (X) 7Certificate
will be
mailed in
window
envelope
to this
address:Name
Estelle Rose, Kobra International, Ltd.
Number/Street/Apt. 7
525 Seventh Avenue, 20th Floor
City/State/Zip 7
New York, NY 10018

9

1. Complete all necessary spaces.
2. Sign your Application in space 8.
3. If you are a foreign author, also sign your name in space 9.
4. Application form.
5. Non-refundable filing fee in check or money order payable to Registrar of Copyrights.
6. Deposit material.
MAIL TO:
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20540-6000

*17 USC (506)(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,000.

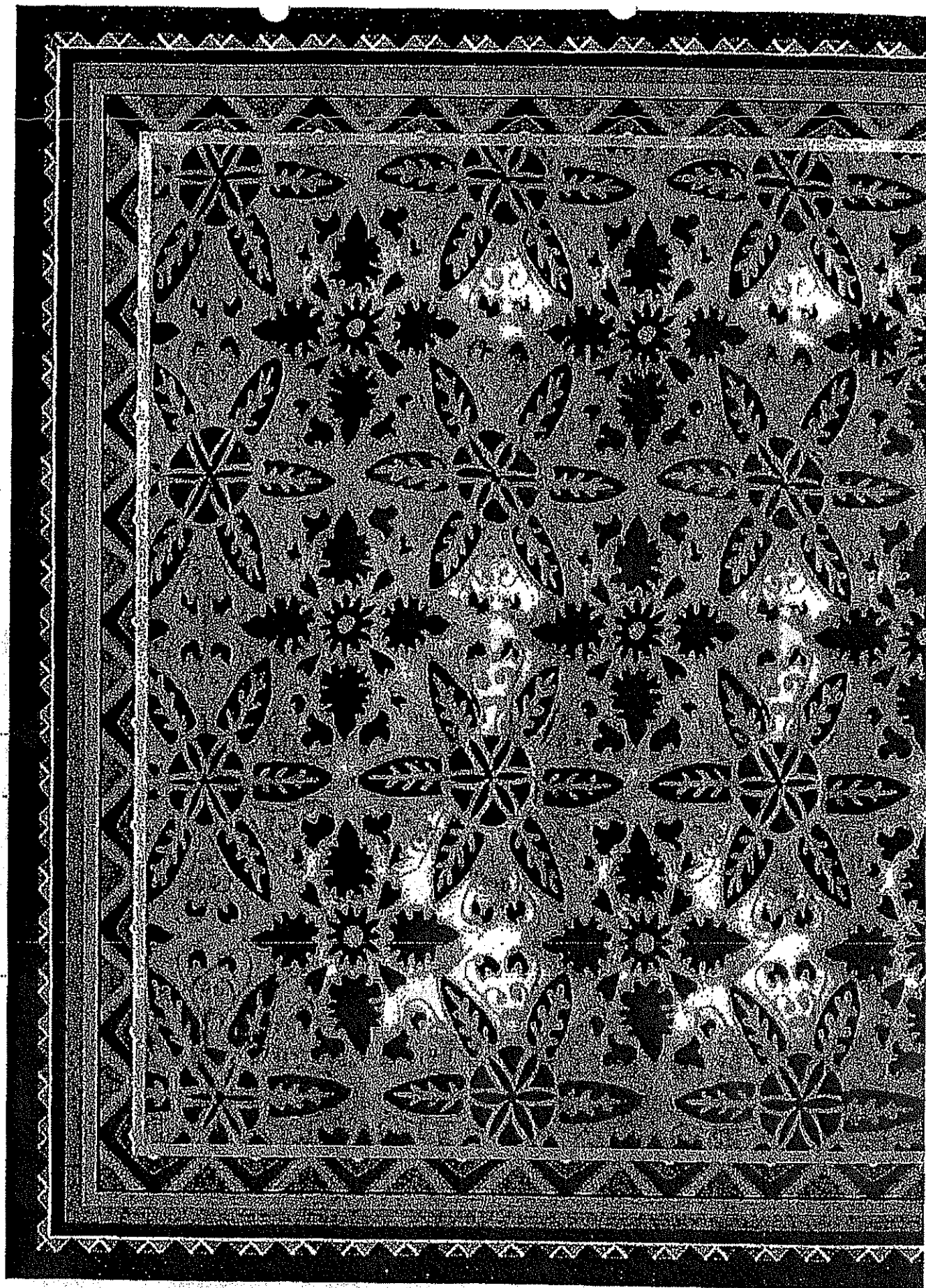
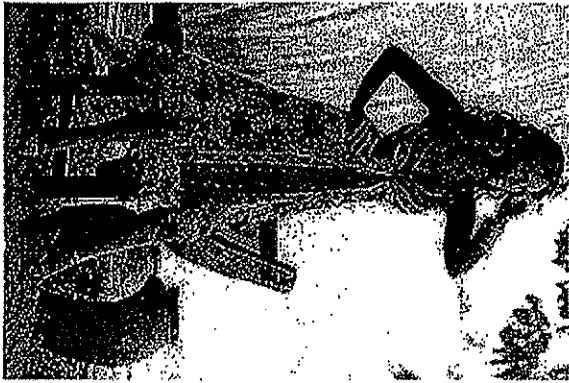


Exhibit B

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[advanced search](#)
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Border-print primal dress, \$149.00

This dress has a plunging wide V-neckline with gathered knotted bodice; uneven hem. Back zip. Silk. Imported. Dry clean. 56" length at longest point. Sizes 2-14. Multi.

FIT NOTE: Sexy close-fitting bodice with an A-line skirt.
826049D7

see size information

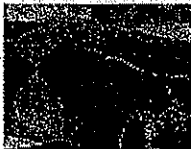
select size

select color

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qty

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Nubra® Ultra-light
\$32.00



Mixed bangle bracelet set
\$49.00



X-front patent wedge sandals
\$89.00



Wood linket earrings
\$39.00

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African-print top, \$129.00

Top with elastic ruching at bust; heavily-beaded notch neckline. Three-quarter flare sleeves. Silk. Imported. Dry clean. Sizes XS(2-4), S(6-8), M(10-12), L(14-16), Multi.
FIT NOTE: Relaxed; easy fit with slight shaping. Follow the given size equivalents for the best fit. If in between sizes, take the next smaller size.
 828028D7

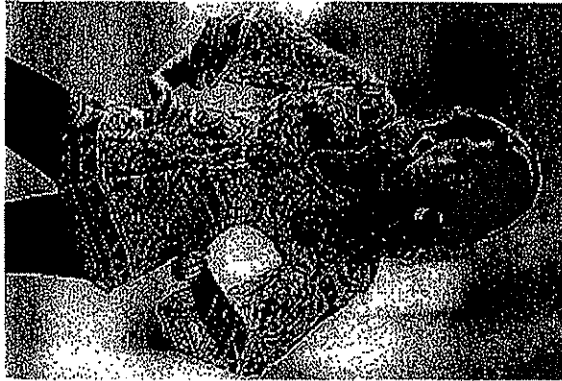
[see size information](#)

[select size](#)

[select color](#)

[add to shopping bag](#)

qty

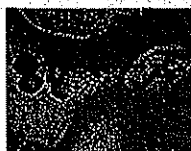


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[see another view](#) [see colors](#)

[suggested coordinates](#)



Basic leggings.
\$39.00



Wood thicket
earrings. \$39.00



X-front patent
wedge sandals.
\$89.00



Your favorite fitted
boot-cut jeans.
\$59.00

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EXHIBIT 10-3

Lansing R. Palmer (LP-4179)
AKERMAN SENTERFITT LLP
335 Madison Avenue, 26th Floor
New York, New York 10017-4636
(212) 880-3800

Attorneys for Defendant Boston Proper, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
NICOLE MILLER, LTD. d/b/a KOBRA :
INTERNATIONAL, LTD., a New York :
Corporation, :

Plaintiff, :

- against - :

BOSTON PROPER, INC., a Florida :
Corporation; and JOHN DOES 1-15; XYZ :
CORPORATIONS 1-15, :

Defendants. :

ECF CASE
07 Civ 9894 (RJH)

ANSWER TO COMPLAINT

JURY TRIAL DEMANDED

-----X
Defendant Boston Proper, Inc. ("Boston Proper") hereby answers and responds to the
complaint filed by Plaintiff Nicole Miller, Ltd. d/b/a Kobra International, Ltd., as follows:

THE PARTIES

1. Boston Proper is without information sufficient to determine the truth of the averments in paragraph 1, and therefore denies same.
2. Admits.
3. Boston Proper is without information sufficient to determine the truth of the averments in paragraph 3, and therefore denies same.

JURISDICTION AND VENUE

4. Admits that the complaint avers an action for: (a) copyright infringement; (b) unfair competition and false designation of origin; (c) unlawful and deceptive acts and practices in violation of N.Y. Gen. Bus. Law §349; and (d) unfair competition under New York state law, based on activities that allegedly have occurred in this District and elsewhere in interstate commerce, but denies that those claims have merit.

5. Denies the allegations contained in paragraph 5 of the complaint, except admits that subject matter jurisdiction is proper in this District and that supplemental jurisdiction is proper in this District.

6. Admits.

7. Admits.

FACTUAL BACKGROUND

A. NICOLE MILLER PRODUCTS AND ITS ALLEGED COPYRIGHTED DESIGN

8. Admits that Nicole Miller is a designer that has been featured in magazines and other media. Boston Proper is without information sufficient to determine the truth of the remaining averments in paragraph 8, and therefore denies same.

9. Admits that a purported copy of a Certificate of Registration and deposit are attached to the complaint as Exhibit A. Boston Proper is without information sufficient to determine the truth of the remaining averments in paragraph 9, and therefore denies same.

10. The averments of paragraph 10 recite a legal conclusion to which no response is required.

11. Admits that a purported copy of the Nicole Miller store locator for New York is attached as Exhibit B to the complaint, and that copies of advertisements are attached to the complaint as Exhibit C. Boston Proper is without information sufficient to determine the truth of the remaining averments in paragraph 11, and therefore denies same.

B. BOSTON PROPER ALLEGED ACTS

12. Denies the allegations contained in paragraph 12 of the complaint, except admits that alleged copies of photographs of products are attached to the complaint as Exhibit D.

13. Denies the allegations contained in paragraph 13 of the complaint, except admits that a copy of a letter dated March 22, 2007 from Greenberg Traurig LLP to Boston Proper is attached to the complaint as Exhibit E, and that Boston Proper received the letter.

14. Denies.

15. Denies.

16. Denies.

FIRST CLAIM FOR RELIEF

(Copyright Infringement Under 17 U.S.C. §501)

17. Defendant Boston Proper repeats and realleges the responses contained in paragraphs 1 through 16 of this Answer as if fully set forth herein.

18. Boston Proper is without information sufficient to determine the truth of the averments in paragraph 18, and therefore denies same.

19. Denies the allegations contained in paragraph 19 of the complaint, except admits that Boston Proper is not licensed by Plaintiff with respect to the alleged Nicole Miller Copyright or Africa Design.

20. Denies.

21. Denies.

22. Denies.

SECOND CLAIM OF RELIEF

(Unfair Competition and False Designation of Origin Under 15 U.S.C. § 1125(a))

23. Defendant Boston Proper repeats and realleges the responses contained in paragraphs 1 through 22 of this Answer as if fully set forth herein.

24. Denies.

25. Denies.

26. Denies.

27. Denies.

28. Denies.

THIRD CLAIM OF RELIEF

(Unlawful Acts and Practices Under New York General Business Law § 349)

29. Defendant Boston Proper repeats and realleges the responses contained in paragraphs 1 through 28 of this Answer as if fully set forth herein.

30. Denies.

31. Denies.

32. Denies.

33. Denies.

34. Denies.

FOURTH CLAIM OF RELIEF

(Unfair Competition Under New York State Law)

35. Defendant Boston Proper repeats and realleges the responses contained in paragraphs 1 through 34 of this Answer as if fully set forth herein.

36. Boston Proper is without information sufficient to determine the truth of the averments in paragraph 36, and therefore denies same.

37. Denies.

38. Denies.

39. Denies.

[There are no numbered paragraphs between paragraphs 39 and 58 of the complaint.]

58. Denies.

59. Denies.

PRAYER FOR RELIEF

WHEREFORE, Boston Proper prays:

1. That the complaint against Boston Proper be dismissed;
2. that an award of costs and attorneys' fees be granted to Boston Proper;
3. for such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Boston Proper hereby demands a jury trial on all triable issues raised by the complaint.

Dated: December 17, 2007

Respectfully submitted,

/s/ Lansing R. Palmer

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